

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of AF-MD, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ERICA LEE DAVIS,

Respondent-Appellant,

and

MICHAEL ANDRE DEANS,

Respondent.

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UNPUBLISHED

May 27, 2003

No. 244926

Cass Circuit Court

Family Division

LC No. 01-000275-NA

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent-appellant Erica Lee Davis appeals as of right from the trial court order terminating her parental rights to the minor child AF-MD under MCL 712A.19b(3)(g). We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts And Procedural History**

The FIA filed a petition on in June of 2001, requesting that the trial court take temporary custody of AF-MD and filed an amended petition one day later. The amended petition alleged that, after receiving information that Davis was living with her child in an abandoned home, the FIA's investigator found Davis and the child at a park. Davis did not have formula or diapers with her, and had not fed the baby for four hours. Davis appeared to have no permanent residence. The amended petition further alleged that Davis yelled obscenities at the FIA's investigator and police officers and kicked the investigator's car. The trial court took jurisdiction of the child after an adjudication hearing in October of 2001, and ordered Davis to comply with the case service plan. The case service plan required that Davis (1) submit to a substance abuse evaluation, (2) participate in substance abuse counseling, (3) participate in anger management counseling, (4) complete parenting classes, (5) attend supervised parenting time with the child,

(6) provide random drug screens, (7) submit to a psychological assessment, (8) obtain suitable housing, and (9) obtain employment.

In June of 2002, the FIA filed a petition seeking termination of Davis's parental rights under MCL 712A.19b(3)(g), noting her failure to comply with the case service plan. At the hearing on the termination petition, caseworker Katherine Yoder detailed Davis's failure to comply with the case service plan. Yoder explained that, although Davis submitted to a substance abuse assessment, she tested positive for marijuana twice in April of 2002 and frequently failed to call in for the random drug screens. Davis was pregnant with her second child when she tested positive for marijuana in April of 2002. Davis was terminated from the first substance abuse treatment program to which she was referred for failure to attend. Although Davis missed several appointments at the second program she entered, she had been attending the second program regularly since the end of April of 2002. Yoder testified that Davis made "some progress" in improving her parenting skills, but noted that the parenting skills instructor indicated that further progress would be "difficult and time consuming." However, Davis made no progress with respect to anger management. In fact, Yoder testified that, during one supervised visit, Davis became frustrated with the child and threw her onto a couch. Although Davis failed to attend the supervised visits "a number of times" due to transportation problems, Yoder reported that Davis was always very happy to see the child. With respect to housing, Yoder testified that Davis's mother was subsidizing her rent payment of \$350 per month for an apartment because Davis had no income other than the financial assistance she was receiving for her unborn child. Yoder further testified that Davis had not obtained a job or her GED. Rather, Davis was expelled from the Violinia Outcomes School in January of 2002. Finally, Yoder testified that Davis complied with the requirement that she submit to a psychological assessment.

Dr. William Schirado testified with respect to his psychological assessment of Davis in August of 2001. Schirado concluded that respondent exhibited "generalized significant immaturity and poor emancipation."<sup>1</sup> With respect to Davis's interaction with her child, Schirado testified that she was concerned about her child's welfare but that, mainly due to her substance abuse problem, her bonding with the child was not good. Schirado explained that Davis's progress during the first six to nine months of the case would be "a reasonably good indicator" of her long-term potential for independent parenting.

Dr. James Henry testified with respect to his psychological assessment of the child. Henry testified that the AF-MD had facial features and certain developmental delays that could indicate fetal alcohol syndrome. However, Henry explained that, because the child's growth was normal and her motor skills and problem solving skills were normal, it was too early to diagnose her with fetal alcohol syndrome. Henry also noted that the child suffered from insecure attachment and bonding problems, which were probably caused by her needs not being met in the first year of her life. Henry opined that termination was in the child's best interests because she was "on the cusp of potential long-term harm to her development" if she was not placed in a safe, structured environment as soon as possible.

After hearing the evidence, the trial court concluded that the FIA had proven by clear and convincing evidence that Davis failed to provide proper care and custody for her child, and that

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<sup>1</sup> Davis was born August 23, 1983 and was therefore seventeen when AF-MD was born.

there was no reasonable expectation that she would be able to do so within a reasonable time. The trial court noted that its decision was based on Schirado's psychological assessment of Davis as well as the evidence that she failed to comply with the case service plan. The trial court further concluded that termination of Davis's parental rights was in the child's best interest based on Henry's testimony that the child required permanency as soon as possible. Thereafter, the trial court issued an order terminating Davis's parental rights to the child. Davis now appeals as of right.

## II. Standard Of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence.<sup>2</sup> This Court reviews the trial court's findings of fact for clear error.<sup>3</sup> A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made.<sup>4</sup> Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order the termination of parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests.<sup>5</sup> The trial court's decision regarding the child's best interests is reviewed for clear error.<sup>6</sup>

## III. The Trial Court's Decision

We conclude that the trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence.<sup>7</sup> When the child was initially taken into foster care, Davis did not have housing, and she suffered from substance abuse and anger management problems. By failing to comply with the case service plan, Davis failed to address the problems that prevented her from providing proper care for her child. Davis tested positive for marijuana use just two months before the termination petition was filed and failed to demonstrate any progress with anger management. Further, although Davis did not challenge the trial court's best interests determination, the evidence did not show that termination of her parental rights was clearly not in the child's best interests.<sup>8</sup> Thus, the trial court did not clearly err in terminating respondent-appellant's parental rights to the child.

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio

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<sup>2</sup> *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

<sup>3</sup> MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

<sup>4</sup> *Jackson*, *supra* at 25.

<sup>5</sup> MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

<sup>6</sup> *Trejo*, *supra* at 356-357.

<sup>7</sup> MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

<sup>8</sup> MCL 712A.19b(5); *Trejo*, *supra* at 356-357.